

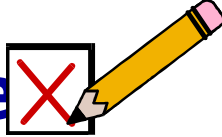


# ***Rules on Affiliation and Limitation of Subcontracting***

**HQ AFSPC/LGCM  
Peterson AFB  
as of 25 Sept 2001**



# Agenda

- **Purpose** 
- **Overview**
- **Why Are There Rules**
- **Affiliation**
- **Limitation of Subcontracting**
- **Summary and Q&A**



# ***Purpose***

**To insure that small business offerors are aware of SBA rules on *affiliation* and *limitation of subcontracting* that affect the small business's eligibility for contract award.**



## **Affiliation**

- **Why does affiliation matter?**
- **What is affiliation?**
- **When does affiliation have consequences?**
- **What are SBA's exclusions from affiliation rules?**

## **Limitation of subcontracting**

- **What are the limits?**
- **Who must perform the minimum?**




# ***Why Does the SBA Have Rules?***

- **To keep integrity in the small business program**
- **So “true” small business receive benefits of small business program**
- **To prevent “fronts”**



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# ***Affiliation--First, Some Reminders***

- **Prime/subcontractor relationship not synonymous with affiliation**
- **Affiliation & limitation of subcontracting are separate issues**
  - **Affiliation is how business relationships can affect the SB standing of a SB firm**
  - **Limits on subcontracting affect how much a SB can subcontract**
- **Both issues are relevant only if the prime contractor has to be “small” to be eligible for award**



# ***What is Affiliation?***

## **Business relationships--3 kinds**

### **1. Prime-subcontractor relationship that is not “arms length”**

- **“Ostensible Subcontractor Rule”**
- **SBA determination**
- **Seven point test**
  - **Contract management**
  - **Expertise**
  - **Marketing**
  - **Degree of collaboration on proposal writing**
  - **Relative amount of work for each**
  - **Discrete tasks subcontracted or work commingled?**
  - **Who has complex tasks & costly functions?**





# ***What is Affiliation? (con't)***

## **2. Formal joint venture**

## **3. Business relationships not directly related to an individual contract can cause affiliation**

- **Power & ability to control**



# *Consequences of Affiliation*

**When affiliations are **NOT** excluded from rules:**

- **SBA adds average annual receipts or numbers of employees of firms involved**

## **Example**

- **SBSA, Value=\$30M, NAICS 56121, size standard \$20M**
- **Firm A (prime) and Firm B (sub) affiliate**
- **Firm A's average annual receipts    \$10M**
- **Firm B's average annual receipts    \$25M**
- Total    \$35M**
- **Firm A is not “small” for this procurement because affiliation is not excluded and total exceeds \$20M**



# ***Exclusions from Affiliation Rules***

- **Non-8(a) procurements:**
  - each affiliated firm is small, and
  - value of procurement  $> \frac{1}{2}$  size standard if revenue-based, or
  - $> \$10M$  if employee-based
- **8(a) competitions:**
  - each affiliated firm is small, and
  - at least one 8(a) firm  $< \frac{1}{2}$  size standard; and
  - value of procurement  $> \frac{1}{2}$  size standard if revenue-based, or
  - $> \$10M$  if employee-based
  - SBA must approve any formal joint ventures

**Rules apply to joint venture or prime-sub team**



# ***Exclusions from Affiliation Rules (con't)***

- **Any procurement (incl. 8(a) sole source):**
  - **An 8(a) firm is excluded from affiliation rules when it affiliates with a mentor firm under the SBA Mentor-Protégé Program**
- **Note: Affiliations with large business are never excluded except when the large business is the mentor in a SBA Mentor-Protégé Program**

**Rules apply to joint venture or prime-sub team**



# *Consequences of Affiliation*

**When affiliations **ARE** excluded from rules :**

- **SBA does not add average annual receipts or numbers of employees of firms involved**

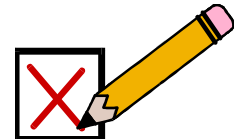
## **Example**

- **SBSA, Value=\$30M, NAICS 56121, size standard \$20M**
- **Firm A (prime) and Firm B (sub) affiliate**
- **Firm A's average annual receipts \$10M**
- **Firm B's average annual receipts \$15M**
- **Firm A is “small” for this procurement because affiliation is excluded from rules**



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# ***Limitation of Subcontracting***

- **There are three aspects to limitations on subcontracting**
  - **What are the limits**
  - **Who has to perform the minimum**
  - **What is the time period to perform the minimum**
- **Standard FAR clauses have not been revised to “catch up” to new CFR rules but CO will interpret the clauses as described in these charts**



# ***Limitation of Subcontracting***

**What is the minimum for  
retention?**

<b><u>Services</u></b>	<b><u>Supplies</u></b>
<b>50% of personnel costs</b>	<b>50% of cost of manufacturing, excluding materials</b>
<b><u>General Construction</u></b>	<b><u>Special Trade Construction</u></b>
<b>15% of cost of contract with own employees, excluding materials</b>	<b>25% of cost of contract with own employees, excluding materials</b>





# ***Limitation of Subcontracting***

## **Who must perform the minimum?**

- **Small Business Set-Aside or 8(a) contract**  
**when value of procurement < 1/2 size standard**  
**if revenue-based or < \$10M if employee-**  
**based**
  - **SB prime by itself**
- **Small Business Set-Aside or 8(a) contract**  
**when value of procurement > 1/2 size standard**  
**if revenue-based or > \$10M if employee-**  
**based**
  - **SB prime together with any 1<sup>st</sup> tier SB subs**



# ***Limitation of Subcontracting***

## **Who must perform the minimum (con't)?**

- **HUBZone sole source, competitive or when 10% price preference is used**
  - **SB HUBZone prime together with any HUBZone subs**
- **When 10% SDB price evaluation credit is claimed**
  - **Evaluation credit only used in full and open competitions**
  - **Same rules as small bus set-aside (previous chart)**



# ***Limitation of Subcontracting***

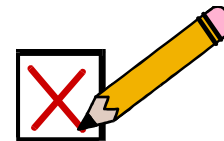
**What is the time period to perform the minimum?**

- **The same time period that the Government uses to evaluate offers (it is an average)**



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# Summary

- **Prime/subcontractor relationship not synonymous with affiliation**
- **Affiliation & limitation of subcontracting are separate issues**
- **Affiliation is how business relationships can affect the SB standing of a SB firm**
- **Relevant only if the prime contractor has to be “small” to be eligible for award**
- **Affiliation not often an issue**
- **Need awareness when crafting business relationships**
- **SBS can refer you to SBA specialist**



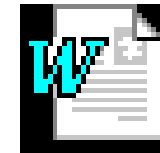
# *References*

- **References:**

- **13 CFR 121.103**
- **13 CFR 124.513**
- **13 CFR 124.519**
- **13 CFR 124.520**
- **13 CFR 125.6**

- **Additional Reading**

- **“Primer on Small Business Affiliation and Limitation of Subcontracting Rules” at [www.peterson.af.mil/hqafspc/contracting/](http://www.peterson.af.mil/hqafspc/contracting/) (click on “small business”)**



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# *Questions?*

